

L. B. BLAKE

IBLA 82-778

Decided September 15, 1982

Appeal from the decision of the New Mexico State Office, Bureau of Land Management, rejecting the high bid for competitive oil and gas lease, NM-A 52643 (Okla.).

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

The Secretary of the Interior has the authority to reject a high bid in a competitive oil and gas lease sale where the record discloses a rational basis for the conclusion that the amount of the bid was inadequate.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

Minerals Management Service is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

APPEARANCES: L. B. Blake, pro se; Robert J. Uram, Esq., Office of the Solicitor, Department of the Interior, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

L. B. Blake has appealed from the decision of the New Mexico State Office, Bureau of Land Management (BLM), dated April 1, 1982, rejecting his high competitive oil and gas lease bid, NM-A 52643 (Okla.), for parcel 25

at the February 23, 1982, lease sale. ^{1/} Parcel 25 consists of lot 3 and the NE 1/4 SW 1/4 sec. 7, T. 18 N., R. 2 E., Indian meridian, Payne County, Oklahoma, in the Goodnight oil and gas field. The United States holds a 75 percent mineral interest in this parcel. Appellant's total bid for the 79.53-acre parcel was \$2,147.31.

The BLM decision indicated that the Minerals Management Service (MMS) had recommended rejection of appellant's bid as inadequate and attached a copy of MMS' report on the parcel to BLM. This report briefly explained the discounted cash flow computer simulation technique used by MMS to evaluate the parcel, listed the data used, and presented the resulting statistical information and a graph based on some of the information from which MMS concluded that the parcel was worth \$100 per acre.

The data used by MMS in the simulation were the following:

| | |
|------------------------|--------------------|
| Low decline rate: | 0.20 |
| High decline rate: | 0.20 |
| Low reserves: | 1,000 bbls |
| High reserves: | 48,000 bbls |
| Most likely reserves: | 2,500 bbls |
| Low drilling cost: | \$270,010/well |
| High drilling cost: | \$330,013/well |
| Low operating cost: | \$10,026/well/year |
| High operating cost: | \$12,254/well/year |
| Low Federal tax rate: | 0.16 |
| High Federal tax rate: | 0.46 |
| Economic limit: | 5 bbl/day |
| Discount rate: | 0.15 |
| Royalty rate: | 0.125 |
| Low oil price: | \$31.70/bbl |
| High oil price: | \$51.05/bbl |
| Risk factor: | 0.25 |

^{1/} Counsel for BLM has filed a motion to dismiss this appeal because appellant failed to serve the Field Solicitor with a copy of his notice of appeal as provided in the BLM decision and required by 43 CFR Part 4.

This Board has held that an appeal may properly be dismissed on motion of an adverse party named in the decision appealed from who was not served by appellant with a copy of the notice of appeal and statement of reasons where appellant has not responded to the motion or explained the procedural deficiency. Dawley Creek Ranch, 37 IBLA 30 (1978). However, dismissal of an appeal for failure to serve a notice of appeal on adverse parties named in the decision appealed from within the time required is discretionary and not automatic. See Tagala v. Gorsuch, 411 F.2d 589 (9th Cir. 1969); Jack Sedman, 25 IBLA 277, 278 (1976); T. T. Cowgill, 19 IBLA 274, 275 (1975). Counsel for the Government has not alleged any prejudice resulting from appellants' failure to serve him with a copy of the notice of appeal. No prejudice is apparent as counsel has submitted a reply brief responding to appellant's arguments. Dismissal of the appeal under the circumstances would preserve technical procedures at the expense of substantive review and discretion is properly exercised to deny the Motion to Dismiss.

The report states that the reserves estimates were based on production from adjacent wells in the East and Northeast Ramsey Fields in secs. 7 and 8, T. 18 N., R. 2 E., Indian meridian.

In his statement of reasons, appellant challenges the validity of certain of the data. He argues that the high oil price of \$51.05 per barrel is unrealistically high when current prices are declining and are now in the \$25-28 range after severance and windfall taxes. He contends that this leads to a high valuation for the parcel. Appellant also argues that, if MMS' most likely reserves figure of 2,500 barrels is accurate, then the presale value should have been a negative value because oil would have to sell for over \$100 a barrel just to pay for the completion of a \$300,000 well. As a result, he suggests that the computer simulation does not reflect a rational evaluation. Appellant asserts that a 25 percent risk factor is too low because it assumes that 3 out of 4 new field wildcat or extension wells would be successful. In support of his assertion he submitted statistical data on the number of new producing field wildcat and extension wells as well as the total number of wells drilled in Payne County in 1978, 1979, and 1980. The 1980 data reflect a 50 percent success rate for wildcat and extension wells but a 79 percent success rate for all wells. Appellant asserts that not all wells that produce are commercial, so that even these success rates are "optimistic." Appellant also contends that MMS erred by using 40 acres instead of 80 acres when dividing the parcel value to determine an acre value, that therefore, the true net acre figure should be \$50 not \$100, and that his \$36 per acre amount is well within the range of error of such a valuation. ^{2/} Finally, appellant argues that MMS' presale value is too high because MMS failed to consider the impact of the windfall profits tax (about \$3.70 per barrel) and the Oklahoma state severance tax (about \$2.40 per barrel), and suggests that the valuation would be reduced by 20 percent if these taxes were considered.

[1] The Secretary of the Interior has discretionary authority to reject a high bid for a competitive oil and gas lease as inadequate. 30 U.S.C. § 226(b) (1976); 43 CFR 3120.3-1. This Board has consistently upheld that authority so long as there is a rational basis for the conclusion that the highest bid does not represent a fair market value for the parcel. Harry Ptasynski, 48 IBLA 246 (1980); B. D. Price, 40 IBLA 85 (1979); Frances J. Richmond, 29 IBLA 137 (1977). Departmental policy in the administration of its competitive leasing program is to seek the return of fair market value for the grant of leases, and the Secretary reserves the right to reject a bid which will not provide a fair return. Coquina Oil Corp., 29 IBLA 310, 311 (1977). See Exxon Co., U.S.A., 15 IBLA 345, 357-58 (1974).

[2] MMS is now the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil

^{2/} Appellant's bid of \$2,147.31 represents \$27 per acre for the Government's 75 percent interest. A 100 percent interest, based on appellant's bid, would be valued at \$36 per acre. The Government's \$100 per acre figure represents the per acre value of a 100 percent interest. Thus the Government would value its 75 percent interest at \$75.

and gas leases and the Secretary is entitled to rely on MMS' reasoned analysis. ^{3/} Gerald S. Ostrowski, 34 IBLA 254 (1978); Coquina Oil Corp., *supra*; Arkla Exploration Co., 25 IBLA 220 (1976). When BLM relies on that analysis in rejecting a bid as inadequate, it must ensure that a reasoned explanation is provided for the record to support the decision. Southern Union Exploration Co., 41 IBLA 81, 83 (1979).

Although the MMS report did not clearly state its presale valuation of parcel 25 or explain exactly how it was arrived at, appellant correctly ascertained that the MMS analysis resulted in a net \$100 per acre presale value. On this basis, the Government's 75 percent interest would be valued at \$75 per acre or a total of \$5,965 for the 79.53-acre parcel, in contrast to appellant's \$27 per acre or \$2,147.31 total bid.

The MMS evaluation technique as described in its report and supplemental comments submitted in response to appellant's statement of reasons is as follows: Based on the data ranges previously noted, 5,000 present worth values for a well on parcel 25 were computed. The mean present worth value was determined to be \$76,137 per well. MMS then plotted on a graph the present worth values against a risk of drilling factor and connected the point representing the mean present worth value at no risk (\$76,137) with the point representing the cost of drilling a dry hole, a negative present worth value at a risk factor of one. From the graph, MMS determined that the present worth value at a risk of 25 percent, the risk factor assigned to the results of the simulation, was \$4,000 per well. The \$4,000 value was then divided by 40 acres, the well spacing unit acreage, to obtain a per acre value for the oil and gas on the parcel.

In response to appellant's statement of reasons, counsel for BLM has submitted MMS' comments on his arguments. They read in part:

The windfall profits tax was considered, however Oklahoma severance tax was not considered. The price of oil includes a forecasted oil price five years in the future. These forecasted oil prices may be on the high side considering the recent drop in oil prices, however according to an article in the May 7, 1982, Wall Street Journal, crude oil prices are expected to rise again. As an example the Journal quoted Platt's Oilgram Price Report concern-crude oil on the spot market which has risen from \$27.50/barrel in March, 1982 to \$32.80/barrel in May, 1982, a price increase of \$5.00/barrel in two months.

The "most probable reserves" figure represents the apex of a triangular distribution from a low of 1000 barrels to a high of 48,000 barrels between which 5000 reserve and present-worth values were computed. The mean reserve figure was calculated to be 17,412 barrels which is the reserve figure that most closely

^{3/} MMS has assumed the minerals-related functions of the Conservation Division of the Geological Survey under the provisions of Secretarial Order No. 3071, dated Jan. 19, 1982. See 47 FR 4751 (Feb. 2, 1982).

matches the unrisks mean present worth value of \$76,137. The 2500 barrel "most probable" figure was utilized to skew the computed mean reserve and present worth values toward the low end of the distributions.

The 40 acres referred to is the spacing unit acreage. The present worth is computed on a per well basis. To convert to a per tract basis, we divide the per well present worth by the spacing unit acreage to obtain a per acre value. This per acre value is then multiplied by both the tract acreage and the government's interest in order to obtain a total tract value.

According to Mr. Blake's statistics, the probability of getting a well in Payne County in 1980, for all wells drilled, was 79 percent (76+3). We believe, therefore, that our risk factor of 25 percent is not out of line.

In addition, MMS states that it reviewed nearby lease sales by the State of Oklahoma for the last 2 years in order to assure that its valuation of parcel 25 was not excessive. The sales data reflects that the nine State leases sold for amounts ranging from \$103 to \$258 per acre.

Appellant's arguments as to the 40-acre calculation and the application of the most probable reserves figure stem from the failure of MMS to fully identify its data and explain its analysis. MMS has remedied that failure in its additional comments and we conclude that appellant's arguments on those points do not support a finding of error in the MMS evaluation.

Appellant's remaining arguments focus on the appropriateness of the data elements used in the MMS evaluation for risk and projected oil prices. ^{4/} Although appellant has supported his argument concerning the risk factor assigned and MMS concedes that its projected oil price levels may be high, both risk and price are preeminently matters that involve expert opinion. Where MMS' opinion differs from an appellant's and the appellant does not show that the MMS opinion has an insufficient rational basis and its own opinion results in a bid representing fair market value, we will affirm the BLM decision. See Harold R. Leeds, 60 IBLA 383 (1981); Ojai Oil Co., 49 IBLA 33, 37-38 (1980).

On the basis of the record before us, which is supported by information about recent state lease sales in the vicinity of parcel 25, we affirm BLM's decision that appellant's bid was inadequate.

^{4/} Appellant's concern that Federal windfall and state severance taxes were not taken into account is partially answered by the MMS statement that the former were considered, although its statement does not specify whether this was done as part of the Federal tax rate factor or the price factor or otherwise. The omission of the Oklahoma severance tax alone does not, in our view, undermine the reasonableness of MMS' determination.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Edward W. Stuebing
Administrative Judge

